



de maximis, inc.

186 Center Street
Suite 290
Clinton, NJ 08809
(908) 735-9315
(908) 735-2132 FAX

November 16, 2015

VIA ELECTRONIC & US MAIL

Ms. Stephanie Vaughn
ATTN: Lower Passaic River Remedial Project Manager
Emergency and Remedial Response Division
U.S. EPA, Region 2
290 Broadway, 19th Floor
New York, New York 10007

**Re: Monthly Progress Report No. 102 – October 2015
Lower Passaic River Study Area (LPRSA) Remedial Investigation/Feasibility Study
(RI/FS)
CERCLA Docket No. 02-2007-2009**

Dear Ms. Vaughn:

de maximis, inc. is submitting this Monthly Progress Report for the above-captioned project on the behalf of the RI/FS Agreement Settling Parties (Cooperative Parties Group or CPG) pursuant to the Administrative Settlement Agreement and Order on Consent (Settlement Agreement or AOC). The Progress Report satisfies the reporting requirements of Paragraph 42 of said Settlement Agreement. The CPG has revised this Progress Report to address the Region's direction in its September 1, 2015 letter about Section (d).

(a) Actions which have been taken to comply with this Settlement Agreement during the previous month.

Meetings/Conference Calls

- On October 8, CPG and EPA Region 2 (Region 2) held a conference call to discuss the status of Region 2's responses to CPG Responses to Comments (RTCs) on the draft 17-mile Baseline Human Health Risk Assessment (BHHRA) and the draft 17-mile Baseline Ecological Risk Assessment (BERA) and to discuss the CPG's proposed benthic community Exposure Zone QAPP Worksheets.
- On October 22, CPG, Region 2, and CPG and Region 2 consultants held a conference call to discuss Region 2's responses to CPG's RTCs on the draft 17-mile BHHRA.

Correspondence

- On October 5, CPG requested the status on two matters related to the draft 17-mile BHHRA and the CPG's proposed benthic community Exposure Zone QAPP Worksheets from Region 2.
- On October 6, Region 2 requested information and inputs related to the Contaminant Fate and Transport (CFT) model from CPG.

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- On October 6 and 7, CPG and Region 2 exchanged emails regarding scheduling a conference call to discuss the draft 17-mile BHHRA and the CPG's proposed benthic community Exposure Zone QAPP Worksheets.
- On October 15, CPG submitted the September Monthly Progress Report to Region 2.
- On October 16, CPG submitted a letter to Region 2 regarding the benthic community Exposure Zone sampling proposal.
- On October 16, Region 2 provided responses to CPG's RTCs on the draft 17-mile BHHRA.
- On October 19, CPG acknowledged receipt of Region 2's responses to CPG's RTCs on the draft 17-mile BHHRA and requested a conference call with Region 2 to discuss.
- On October 20, Region 2 proposed to CPG a conference call time to discuss Region 2's responses to CPG's RTCs on the draft 17-mile BHHRA.
- On October 21, CPG responded to Region 2's October 6 request and provided responses and CFT model inputs.
- On October 23, Region 2 submitted a letter to CPG confirming that the parties remain in an extended Negotiation Period relative to dispute resolution on the benthic community Exposure Depth/Zone and detailing Region 2's major concerns regarding the proposed Exposure Zone sampling plan.
- On October 23, CPG and Region 2 exchanged emails regarding acknowledgement of CPG's receipt of Region 2's October 23 letter and CPG's request for clarification on whether Region 2 would be provided specific written comments on the CPG's worksheets for the Exposure Zone Survey QAPP.
- On October 30, Region 2 provided responses to CPG's responses to Region 2 comments on the draft 17-mile BHHRA related to the LPRSA Creel Angler Survey to CPG.

Work

- CPG Modeling Team continued work on refinement of the Newark Bay component of the LPRSA Model.
- CPG continued preparation of its response to the Region 2's COPC mapping paper.
- CPG continued preparation of its Exposure Zone Dispute Resolution position paper arising from the Region's June 2015 letter rejecting the CPG's use of a site-specific exposure zone for benthic invertebrates and bottom feeding fish.
- CPG continued responding to Region 2 comments received on previously submitted draft 17-mile LPRSA RI/FS deliverables.

(b) Results of Sampling and Tests

- None.

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(c) Work planned for the next two months with schedules relating to the overall project schedule for RI/FS completion

- CPG will continue responding to Region 2 comments on previously submitted 17-mile LPRSA RI/FS deliverables.
- CPG will continue preparation of its Exposure Depth/Zone Dispute Resolution position paper arising from the Region's June 2015 letter rejecting the CPG's use of a site-specific exposure zone for benthic invertebrates and bottom feeding fish.
- CPG will continue preparation of its response to the Region 2's COPC mapping paper.
- CPG will continue revisions to the draft 17-mile Baseline Human Health Risk Assessment.
- CPG will draft a revision to the draft 17-mile Baseline Human Health Risk assessment.
- CPG Modeling Team will continue work on refinement of the Newark Bay component of the LPRSA Model.

(d) Problems encountered and anticipated problems, actual or anticipated delays, and solutions developed and implemented to address actual or anticipated problems or delays.

The CPG has agreed to retain only near-term problems and concerns in the monthly reports moving forward pursuant to the direction in Region 2's September 1 letter; however, previous Progress Reports through July 2015 document in Section (d) significant issues and matters largely the result of actions and decisions by the Region and its Partner Agencies that have significantly delayed and complicated the completion of the 17-mile RI/FS. The removal of this previous information does not in any way lessen its impact on the completion of the 17-mile RI/FS.

- **Remedial Investigation (RI) Report** – The CPG submitted the Draft 17-mile RI Report on February 18, 2015. Region 2 has not provided a definitive date to deliver comments on the draft report. Extended delay in providing the comments will further delay the completion of the 17-mi RI/FS.
- **Feasibility Study (FS)** – The CPG submitted the Draft FS on April 30, 2015. The Region has not provided a definitive date to deliver comments on the Draft FS. In addition, Region 2 has not provided comments on the RAO/PRG Memorandum (submitted on March 27, 2015), Alternatives Screening Memorandum (submitted on April 16 and 21, 2015) and the Alternatives Evaluation Memorandum (submitted on April 26, 2015). Extended delay in providing the comments will further delay the completion of the 17-mi RI/FS.
- **Baseline Human Health Risk Assessment (BHHRA)** – The CPG submitted the 17-mile BHHRA on June 6, 2014 and the Region provided comments on June 5, 2015. The CPG and the Region conducted several teleconferences and exchanged correspondence throughout June and August 2015. The CPG provided responses to

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comments (RTC) on August 21, 2015. In addition, the CPG prepared responses to the Region's July 15, 2015 additional comments, which were submitted to the Region on September 1, 2015. As documented in the CPG's RTCs, many of the Region's comments direct the CPG to make changes to the BHHRA that are inconsistent with the Region 2-approved Problem Formulation Document and the CPG's October 2013 Risk Assessment and Risk Characteristic Plan and the associated Region 2's January 31, 2014 comments and USEPA risk assessment guidance. This is likely to delay the revision of the 17-mile BHHRA as the CPG and the Region continue to resolve these inconsistencies. The Region failed to meet the 30-day turnaround on responding to the CPG's response to comments that it proposed in its July 20, 2015 letter to the CPG; the failure to provide a timely response will cause further delay the delivery of a revised 17-mile BHHRA and ultimately further delay the completion of the 17-mile RI/FS. The CPG received the Region's responses on October 16 and October 30. Furthermore, the CPG questions and strongly disagrees with the Region's need to provide the revised 17-mile BHHRA to its Partner Agencies for a complete review.

- **Baseline Ecological Risk Assessment (BERA)** - The CPG submitted the 17-mile BHHRA on June 13, 2014 and the Region provided comments on May 1, 2015. The CPG and the Region conducted several teleconferences and exchanged correspondence throughout May and July 2015. The last teleconference was conducted on July 29, 2015, during which the Region requested the CPG provide a list of action items. The action items were provided on July 30 and included three items for Region 2 and one item for the CPG that required the Region's input. The Region has not provided its response to these action items in 3 months. The CPG provided 17-mile Draft BERA responses to comments (RTCs) on September 11, 2015 and additional material on September 15; the Region stated in its July 20 letter that it would provide its responses in 30 days – Region 2's responses were not received in October. As documented in the CPG's RTCs, many of the Region's comments direct the CPG to make changes to the BERA that are inconsistent with the Region 2-approved Problem Formulation Document, the CPG's October 2013 Risk Analysis and Risk Characterization Plan and the associated Region 2's January 31, 2014 comments, and USEPA risk assessment guidance. Specifically, the Region after an extended delay has introduced during June and July 2015 a Sediment Quality Triad and Reference Methodology that is wholly inconsistent with USEPA guidance. This is likely to delay the revision of the 17-mile BERA as the CPG and the Region continue to resolve these inconsistencies. Furthermore, the CPG questions and strongly disagrees with the Region's need to provide the revised 17-mile BERA to its Partner Agencies for a complete review.
- **COPC Mapping** - The CPG began discussions with the Region regarding COPC mapping in May 2013 with the submission of the "Lower Passaic River Surface Sediment Concentration Mapping Technical Memorandum". The CPG has attempted, but was unable to conduct significant and meaningful dialogue with the

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Region on COPC mapping between that time and early 2015. COPC Mapping is an integral part of the 17-mile RI/FS including the chemical fate and transport modeling and the identification and evaluation of remedial alternatives. Both the mapping approach and data density are consistent with mapping and data density at other large sediment sites such as the Hudson River, Fox River, and the Lower Duwamish. The Region and CPG representatives met on March 18, 2015 to discuss the CPG's mapping and agreed to follow-on discussions. The Region and the CPG agreed to meet on June 16, 2015 and the Region stated that it would provide its portion for the CPG's review in advance of the meeting. The Region provided its position paper on June 10, 2015. Due to the short-time frame and the complexity of the Region's responses, the CPG postponed the meeting. In a June 12 email, the CPG requested that the Region provide the underlying documentation for its June 10 position paper. The Region provided this material on July 20. The CPG is preparing a response to the Region's position paper which will be delivered in November and document several significant shortcomings in the Region's analysis.

- **Exposure Depth/Zone(s)** – The CPG initiated discussions with the Region in early 2014 on the matter of an appropriate site-specific exposure depth/zone for benthic invertebrates. EPA HQ, Region 2 and CPG representatives conducted a teleconference and web-meeting on February 13, 2014 to discuss this matter. The CPG provided additional material to the Region on February 19, 2014. The CPG was unable to engage the Region on this matter for the remainder of 2014. In January 2015, the Region and CPG agreed to meet to discuss the exposure depth/zone and in advance of this meeting the Region and CPG exchanged information including a May 2014 paper on burrowing depth prepared by Region 2 contractors. EPA HQ, Region 2 and CPG representatives met on February 6, 2015. As a result of the meeting, it was agreed to have follow-on meetings and/or teleconferences later in February 2015; however, these meetings/teleconferences were subsequently cancelled by Region 2. On June 1, 2015, the Region provided a brief letter summarizing its rejection of the CPG's shallow exposure depth/zone. The CPG invoked dispute resolution on June 12, 2015 and began preparation of a position paper. On June 25, the Region acknowledged the CPG's invocation of dispute resolution. On July 2, the CPG requested that the CPG provide the additional information mentioned in its June 25 letter that it relied upon. The Region responded on July 9 to the CPG's request. On August 18, 2015, the CPG contacted the Region and proposed to table dispute resolution and develop a sampling plan to determine LPR site-specific exposure zone(s). In advance of the August 26 teleconference, the CPG provided a brief presentation outlining data quality objectives and proposed sampling. As a result of the teleconference, the CPG provided draft QAPP worksheets on September 17 for further discussion with Region 2. The CPG is concerned that the Region's decisions to include the Partner Agencies in the work plan development and require the inclusion of sediment chemistry sampling will unduly complicate and delay the development of an exposure zone sampling plan that could be implemented in October and November

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2015. Region 2's October 23 letter has made clear that the Region is not interested in collecting empirical data in a timely manner to identify and support appropriate site specific exposure zones.

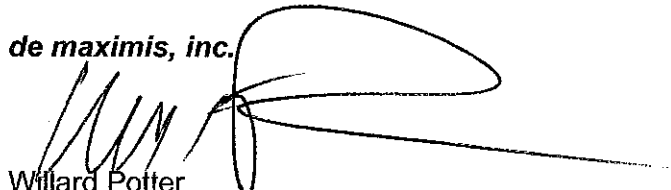
- **Other Documents** - There are number of reports and technical memos (both original and revised submissions) that have been submitted to Region since 2011 that the CPG is awaiting either approval or Region 2's comments. These reports include:
 1. Lower Passaic River Surface Sediment Concentration Mapping Technical Memorandum – submitted May 2013
 2. Upstream Reference Benthic Data Report – submitted August 2013
 3. Background Sediment Data Report – submitted October 2013

The CPG has received the Region's comments on a number of previously submitted reports and is in the process of addressing revising and resubmitting these reports. Please advise the CPG of the Region 2's schedule for action on these remaining documents.

If you have any questions, please contact Rob Law or me at (908) 735-9315.

Very truly yours,

de maximis, inc.


Willard Potter
CPG Project Coordinator

cc: Sarah Flanagan, EPA Office of Regional Counsel
William Hyatt, CPG Coordinating Counsel
Lisa Baron, USACE
Clay Stern, USFWS
Reyhan Mehran, NOAA
Jay Nickerson, NJDEP
Beth Franklin, USACOE
Laura Kelmar, AECOM